

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**LABORERS' PENSION FUND and  
LABORERS' WELFARE FUND OF THE  
HEALTH AND WELFARE DEPARTMENT  
OF THE CONSTRUCTION AND GENERAL  
LABORERS' DISTRICT COUNCIL OF  
CHICAGO AND VICINITY, and JAMES S.  
JORGENSEN, Administrator of the Funds,**

**Plaintiffs,**

**v.**

**BENSON CONSTRUCTION COMPANY, an  
Illinois corporation, and  
MARK W. BERGLUND , individually,**

**Defendants.**

FILED: APRIL 15, 2008  
Case No. 08CV2136 TG  
JUDGE ST. EVE  
MAGISTRATE JUDGE VALDEZ

**COMPLAINT**

Plaintiffs, Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (collectively "Funds") and James S. Jorgensen (hereinafter "Jorgensen"), Administrator of the Funds, by their attorneys, Patrick T. Wallace, Jerrod Olszewski, Christina Krivanek, Amy Carollo, and Charles Ingrassia, for their Complaint against Defendants Benson Construction Company and Mark W. Berglund, individually, state:

**COUNT I**

**(Failure To Pay Employee Benefit Contributions)**

1. Jurisdiction is based on Sections 502(e)(1) and (2) and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132 (e)(1) and

(2) and 1145, Section 301(a) of the Labor Management Relations Act (“LMRA”) of 1947 as amended, 29 U.S.C. §185(a), 28 U.S.C. §1331, and Federal Common Law.

2. Venue is proper pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2), and 28 U.S.C. §1391 (a) and (b).

3. The Funds are multiemployer benefit plans within the meanings of Sections 3(3) and 3(37) of ERISA. 29 U.S.C. §1002(3) and 37(A). They are established and maintained pursuant to their respective Agreements and Declarations of Trust in accordance with Section 302(c)(5) of the LMRA. 29 U.S.C. § 186(c)(5). The Funds have offices and conduct business within this District.

4. Plaintiff James S. Jorgensen (“Jorgensen”) is the Administrator of the Funds, and has been duly authorized by the Funds’ Trustees to act on behalf of the Funds in the collection of employer contributions owed to the Funds and to the Construction and General District Council of Chicago and Vicinity Training Fund, and with respect to the collection by the Funds of amounts which have been or are required to be withheld from the wages of employees in payment of Union dues for transmittal to the Construction and General Laborers’ District Council of Chicago and Vicinity (the “Union”). With respect to such matters, Jorgensen is a fiduciary of the Funds within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A).

5. Defendant Benson Construction Company (hereinafter “Benson” or the “Company”) is an Illinois corporation. The Company does business within this District and is an employer within the meaning of Section 3(5) of ERISA, 29 U.S.C. §1002(5), and Section 301(a) of the LMRA, 29 U.S.C. §185(c).

6. Defendant Mark W. Berglund ("Berglund") is and was at all times relevant herein a shareholder and officer of Benson.

7. The Union is a labor organization within the meaning of 29 U.S.C. §185(a). The Union and Concrete Contractors Association of Greater Chicago ("CCA") have been parties to various area-wide collective bargaining agreements, the most recent of which has been in effect since June 1, 2006 ("Agreement"). The CCA is comprised of various member contractors. The contractors who are members of the CCA are by virtue thereof bound to the terms of the Agreement between the Union and the CCA as well as the Funds' respective Agreements and Declarations of Trust. The Company is a member of the CCA and, as a result, is bound to the terms of the Agreement and the Funds' respective Agreements and Declarations of Trust. A true and accurate copy of the CCA's Membership list as of March 27, 2002, is attached hereto as Exhibit A.

8. The Funds have been duly authorized by the Construction and General Laborers' District Council of Chicago and Vicinity Training Fund (the "Training Fund"), the Midwest Construction Industry Advancement Fund ("MCI AF"), the Chicagoland Construction Safety Council (the "Safety Fund"), the Laborers' Employers' Cooperation and Education Trust ("LECET"), the Concrete Contractors' Association of Greater Chicago ("CCA"), the GDCNI/CAWCC Contractors' Industry Advancement Fund (the "Wall & Ceiling Fund"), the CISCO Uniform Drug/Alcohol Abuse Program ("CISCO"), the Laborers' District Council Labor Management Committee Cooperative ("LCDMC"), the CARCO Industry Advancement Fund ("CARCO"), and the Illinois Small Pavers Association ("ISPA") to act as an agent in the collection of contributions due to those funds.

9. The Agreement and the Funds' respective Agreements and Declarations of Trust obligate the Company to make contributions on behalf of its employees covered by the Agreement for pension benefits, health and welfare benefits, for the training fund and to submit monthly remittance reports in which the Company, *inter alia*, identifies the employees covered under the Agreement and the amount of contributions to be remitted to the Funds on behalf of each covered employee. Pursuant to the terms of the Agreement and the Funds' respective Agreements and Declarations of Trust, contributions which are not submitted in a timely fashion are assessed up to 20 percent liquidated damages plus interest.

10. The Agreement and the Funds' respective Agreements and Declarations of Trust require the Company to submit its books and records to the Funds on demand for an audit to determine benefit contribution compliance.

11. The Agreement obligates the Company to obtain and maintain a surety bond to insure future wages, pension and welfare contributions.

12. Benson entered into an Installment Note ("Note") with the Funds on or about March 10, 2008 to submit payment of amounts due and owing pursuant to an audit conducted of the Company's books and records for the period of May 1, 2005 through October 31, 2007. A true and accurate copy of the Note is attached hereto as Exhibit B.

13. Notwithstanding the obligations imposed by the Agreement, the Funds' respective Agreements and Declarations of Trust, and the Note, as shown in a true and accurate copy of the audit conducted on the Company for the period of May 1, 2005 through October 31, 2007 attached hereto as Exhibit C, the Company has:

- a. failed to pay contributions to Plaintiff Laborers' Welfare Fund of the Health and

Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity for the audit period of May 1, 2005 through October 31, 2007 in the amount of \$11,695.00, thereby depriving the Welfare Fund of contributions, income and information needed to administer the Fund and jeopardizing the health and welfare benefits of the participants and beneficiaries; and

b. failed to pay contributions to Plaintiff Laborers' Pension Fund for the audit period of May 1, 2005 through October 31, 2007 in the amount of \$8,304.90, thereby depriving the Laborers' Pension Fund of contributions, income and information needed to administer the Fund and jeopardizing the pension benefits of the participants and beneficiaries.

14. Pursuant to the terms of the Agreement and the Funds' respective Agreements and Declarations of Trust, the Company owes \$3,052.53 in liquidated damages to the Welfare Fund and \$2,171.44 in liquidated damages to the Pension Fund for the audit period of May 1, 2005 through October 31, 2007.

15. Pursuant to the terms of the Agreements and the Funds' respective Agreements and Declarations of Trust, the Company is liable for the costs of any audit revealing delinquencies to the Funds. Accordingly, the Company is liable for audit costs in the amount of \$965.00, for the audit covering the period of May 1, 2005 through October 31, 2007.

16. The Company's actions in failing to submit payment upon an audit to which it submitted its books and records violate Section 515 of ERISA, 29 U.S.C. §1145.

17. Pursuant to Section 502(g)(2) of ERISA, 29 U.S.C. §1132 (g)(2), Section 301 of the LMRA, 29 U.S.C. §185, the terms of the Agreement and the Funds' respective Trust Agreements, Federal Common Law, and the Note, the Company is liable to the Funds for unpaid contributions, as well as interest and liquidated damages on the unpaid contributions, audit costs, reasonable

attorneys' fees and costs, and such other legal and equitable relief as the Court deems appropriate.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against Defendant Benson Construction Company:

- a. entering judgment in sum certain against the Defendant Company on the amounts due and owing pursuant to the audit including contributions, interest, liquidated damages, audit costs, and attorneys' fees and costs; and
- b. awarding Plaintiffs any further legal and equitable relief as the Court deems appropriate.

## **COUNT II**

### **(Default on Installment Note)**

18. Plaintiffs reallege paragraphs 1-17 of Count I.
19. Defendant Berglund signed a Guaranty of Payment and Indemnification ("Guaranty") on or about March 10, 2008 individually guaranteeing payment of the amounts due under the Note to the Funds. A true and accurate copy of the Guaranty is attached hereto as Exhibit D.
20. Paragraph 8 of the Note provides that

Payments made pursuant to this Installment Note shall be considered "contributions" as defined under the terms of the CBA and the Fund's respective Agreements and Declarations of Trust. If the contributions are not paid by the 10<sup>th</sup> day following the date on which payment should have been received, the contribution shall be considered delinquent and all charges which apply to the late payment of contributions under the terms of the CBA and the Fund's respective agreements and Declarations of Trust shall apply, including, but not limited to, the assessment of interest and liquidated damages. Further, in the event the Company fails to timely make any payments described in this Note. All amounts described in paragraph 1 herein shall immediately become due on the 10<sup>th</sup> day following the date on which payment should have been received by the Fund's under the terms of this Note. In

such event the Company further agrees to pay all attorney fees and costs incurred by the Funds in any action to enforce any part or all of this note.

See Exhibit B.

21. Paragraph 1 of the Guaranty provides that

. . . The Guarantor also agrees to be personally liable for all monthly benefit contributions and/or union dues owed from the Company to the Funds, the District Council and all ancillary funds that are due at the time the Note and Guaranty are entered into and/or are incurred and become due and owing for the duration of the Note, including all interest, liquidated damages, audit costs, attorneys' fees and costs.

22. Paragraph 13 of the Guaranty provides that

The Guarantor hereby authorizes irrevocably any attorney of any court of record to appear for him/her in such court, at any time after ten (10) days notice after default in any payment due under this Guaranty, and confess judgement [sic] against Guarantor, after service of notice of the claimed default, in favor of the Funds for such amount to be unpaid and owed thereon, including interest, liquidated damages and reasonable cost of collection including reasonable attorneys' fees.

23. The Company failed to timely submit its March and April 2008 payments

pursuant to the Note and is in default on the Note.

24. Pursuant to the terms of the Guaranty, Defendant Berglund is liable to the Funds for all amounts due on the defaulted Note, including all outstanding liability on the audit of the Company's books and records conducted for the period of May 1, 2005 through October 31, 2007.

25. Pursuant to Section 502(g)(2) of ERISA, 29 U.S.C. §1132 (g)(2), Section 301 of the LMRA, 29 U.S.C. §185, Federal Common Law, the terms of the Agreement and the Funds' respective Trust Agreements, the terms of the Note and the Guaranty, the Company and Berglund are liable to the Funds for the full amount remaining due on the Note plus interest and liquidated

damages for all late payments and the attorneys' fees and costs incurred by the Funds in bringing this action.

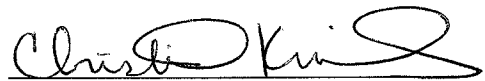
WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against Defendants Benson Construction Company and Mark W. Berglund, joint and severally, as follows:

a. entering judgment against Defendants for the full amount remaining due on the defaulted Note, plus interest and liquidated damages, and the attorneys' fees and costs incurred by the Funds; and

b. awarding Plaintiffs any further legal and equitable relief as the Court deems appropriate.

April 15, 2008

Laborers' Pension Fund, et al.

By:   
Christina Krivanek

Patrick T. Wallace  
Jerrod Olszewski  
Christina Krivanek  
Amy N. Carollo  
Charles Ingrassia  
Laborers' Pension and Welfare Funds  
Sub Office, 111 W. Jackson Blvd.  
Suite 1415  
Chicago, IL 60604  
(312) 692-1540



**Concrete Contractors Assoc.  
Membership List -  
March 27, 2002**

Customer	Contact	Phone	Fax	Customer Type
C-A Cement Construction, Inc.	Anna Cooperlino	630-682-4383	630-582-0875	Contractor
Accurate Construction Inc.	Syed Huseinul	847-328-9500	847-328-9505	Contractor
Adjustable Forms, Inc.	James Lindquist	630-853-9700	630-953-8788	Contractor
Bela Concrete Construction	Al James	630-257-1140	630-257-1187	Contractor
Baumgartner Construction, Inc.	Rich Baumgartner	630-420-0474	630-420-0821	Contractor
Benson Construction Co.	Bill Berglund	847-258-9880	847-258-9881	Contractor
Builders Concrete Co.	Mary Fitzpatrick	630-861-0788	630-820-1810	Contractor
Capital Cement	David Shonim	773-283-3800	773-283-3777	Contractor
Carlson Brothers Builders	Glen Carlson	773-237-2289	773-237-2889	Contractor
Callcrete Decks	Jerry Jones	630-281-2183	630-231-2184	Contractor
Cerami Construction Co. Ltd.	Sal Cerami	708-343-8500	708-343-8540	Contractor
Collette Concrete, Inc.	Vince Collette	630-628-0881	630-628-0478	Contractor
Concrete By Semmlan, Inc.	Semmlan,	630-406-1200	630-408-0808	Contractor
Danlor Construction Co.	Joan O'Gorman	815-485-7075		Contractor
DeGraf Concrete Construction	Mike Pifron	847-541-2140	847-382-1828	Contractor
Eagle Concrete, Inc.	Mike Martin	630-879-2880	630-879-2025	Contractor
Elliot Construction Co	Rob Elliott	630-498-1823	630-488-1857	Contractor
Engineered Constructors, Inc.	Thomas J Ferrarella	219-931-8700	219-821-9787	Contractor
Engstrom Corp.	Robert Engstrom	630-837-3377	630-837-3408	Contractor
Envision, L.L.C.	Lorella Young	773-438-5080	773-438-5483	Contractor
Executive Installations	Gary Skirni	847-382-2260	847-382-2260	Contractor
F.H. Leinweber Co., Inc.	Fred Leinweber	708-424-7000	708-424-8814	Contractor
Gothwald Construction Co	Wayne Gothwald	708-381-4820		Contractor
Grayhawk Construction Co., Inc.	Mike Papp	847-880-5982	847-880-5983	Contractor
Greal Lakes Group	Sandra Haynek	847-298-3737	847-298-1928	Contractor
Green Concrete, Inc.	Bruce Groen	708-474-8428	708-474-8435	Contractor
H. Borne & Sons	Erin Borne, Jr.	773-775-3000	773-775-3004	Contractor
Harry W. Kuhn, Inc.	Woodie Griffin	630-283-1188	630-283-1179	Contractor
Howard Concrete	Brian Howard	630-942-1800	630-942-1824	Contractor
J In One Contractors	Oliver Fifer	773-847-2100	773-847-4601	Contractor
K. Kaup Construction, Inc.	Kaun Kaup	630-878-6300	630-878-6339	Contractor
Kustum Construction	Al Kus	630-827-6300	630-827-0342	Contractor
Lake Glenner Construction	Jennifer	847-528-2722	847-528-3462	Contractor
Lively Construction Co.	Lynn Lively	847-840-0200	847-438-1465	Contractor
Lundberg Corporation	Gary Lundberg	773-478-1810	773-478-2373	Contractor
M.V. Masonry	Michael Volpentesta	708-371-5865	708-371-8845	Contractor
Mailbu Construction, Inc.	Jim Rosei	630-804-2228	630-804-8729	Contractor
Martinez General Contr.	Charles Martinez	847-973-0600	847-873-0800	Contractor

EXHIBIT

A

5/19/02

AX 6308553364

LABORERS WORK DUES

+ BAW-JRAN

002

CODE 10387 CONTRACTOR BENSON CONSTRUCTION CO.

3128 N. SCHOENBECK RD.

ARLINGTON HEIGHTS, IL. 60004

## ASSUMPTIONS :

- 1.) INTEREST RATE 8.50%  
(CURRENT PRIME 6.50 PLUS 2.0)
- 2.) NUMBER OF PAYMENTS 6 PHONE 847-541-9880
- 3.) BEGINNING OF PERIOD PAYMENTS
- 4.) NO INTEREST ON ATTORNEY FEES AND AUDIT COSTS

MONTH	WELFARE	PENSION	DUES	LDCLMCC	CCA	TRAINING FUND	LECET
AUDIT 5/1/05-10/31/07	7,818.76	5,532.14	898.58	118.80	69.30	214.99	
REPORTS							
Nov-07	4,909.52	3,498.88				135.52	
Dec-07	2,681.91	1,911.32				74.03	
SUB-TOTAL CONTRIBUTIONS	15,410.19	10,942.34	898.58	118.80	69.30	424.54	59.40
10% PENALTIES	29.51	17.02	89.86	11.88	6.93	0.73	5.94
20% PENALTIES	3,023.02	2,154.42				83.46	
ACCUMULATED PENALTIES							
ACCUM. INTEREST - ABOVE REPORTS	13.72	9.78					
ACCUM. INTEREST - ABOVE AUDIT	99.93	63.72		1.61	0.96	2.58	0.79
TOTAL BEFORE ATTY & AUDIT COSTS	18,576.37	13,187.28	988.44	132.29	77.19	511.31	66.13
LESS 20% DOWN PAYMENT	3,715.27	2,637.46					
AMOUNT FINANCED	14,861.10	10,549.82					
ATTORNEY FEES AND COSTS	-	-					
AUDIT COSTS	482.50	482.50					
MONTHLY PAYMENT	2,601.18	1,869.89	WEL 2,520.76	ATTY -	AUDIT 80.42		
NUMBER OF PAYMENTS	6	6	PENS 1,789.48	ATTY -	AUDIT 80.41		
TOTAL PAID (X6)	15,607.08	11,219.34					
LESS AMOUNT FINANCED	14,861.10	10,549.82					
LESS ATTORNEY FEES AND COSTS	-	-					
LESS AUDIT COSTS	482.50	482.50					
EQUALS NOTE INTEREST	263.48	187.02					
PLUS ACCUMULATED INTEREST	113.65	73.50					
EQUALS TOTAL INTEREST	377.13	260.52					
GUARANTY AMOUNT	34,954.51						
			SUMMARY TOTALS				
			WEL		15,410.19		
			PEN		10,942.34		
			DUES		898.58		
			LDCMC		118.80		
			CCA		69.30		
			TRAIN		424.54		
			LECET		59.40		
			CISCO		-		
			CAICA		-		
			SUBTOT		27,923.15		
			LATE FEES		5,422.77		
			INT		643.59		
			ATTY		-		
			AUDIT		965.00		
			TOTAL		34,954.51		

EXHIBIT

B

tabbles

This Installment Note ("Note") is made between the Laborers' Pension Fund ("Pension Fund") and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity ("Health and Welfare Fund" or collectively the "Funds"), the parties of the first part, and Benson Construction (the "Company"), the party of the second part.

WHEREAS, the Company has at all relevant times been party to a collective bargaining agreement ("CBA") with Local DC the Construction and General Laborers' District Council of Chicago and Vicinity, whereunder it is obligated to make certain contributions to the above-named Funds, as well as to the Training Fund, on behalf of its covered employees, and to submit payment of all employee union dues;

WHEREAS, the Company has failed to timely pay certain contributions owed to the Funds for the audit period of May 1, 2005 thru October 31, 2007 and reports November 2007 thru December 2007;

WHEREAS, the Company has failed to remit all employee union dues to the Funds, as the designated collection agent for the Construction and General Laborers' District Council of Chicago and Vicinity, for the audit period of May 1, 2005 thru October 31, 2007.

WHEREAS, the Company desires to pay all delinquencies owed to the Funds, to pay all union dues owed to the Construction and General Laborers' District Council of Chicago and Vicinity, together with liquidated damages, and interest, as set forth below and further desires to remain current in its obligation to pay contributions to the Funds.

**THE PARTIES HEREBY AGREE as follows:**

1. The Company will pay \$19,372.35 to the Health and Welfare Fund (comprised of \$15,410.19 in delinquent contributions, \$3,052.53 in liquidated damages, \$482.50 in audit costs and \$377.13 in interest) (based on an interest rate of 8.50%). The Company will also pay \$13,856.88 to the Pension Fund (comprised of \$10,942.94 in delinquent contributions, \$2,171.44 in liquidated damages, \$482.50 in audit costs and \$260.52 in interest). All of these amounts shall be paid according to the schedule described below in paragraphs 4 and 5.
2. The Company will also pay \$511.31 to the Training Fund (comprised of \$424.64 in delinquent contributions, \$84.19 in liquidated damages and \$2.58 in interest), \$77.19 to the CCA Fund (comprised of \$69.30 in delinquent contributions, \$6.93 in liquidated damages and 3.96 in interest), \$66.13 to the LECHT Fund (comprised of \$59.40 in delinquent contributions, \$5.94 in liquidated damages and 5.79 in interest), \$132.29 to the LDCMC Fund (comprised of \$118.80 in delinquent contributions, \$11.88 in liquidated damages and \$1.61 in interest) and \$998.44 in union dues (comprised of \$898.58 in delinquent contributions and \$89.86 in liquidated damages). These delinquent amounts shall be paid in their entirety at the time payment under this Note commences, in accordance with the schedule described in paragraph 4.
3. The company will also pay the Funds the sum of \$965.80 in audit costs. This amount split equally between Welfare and Pension as described in paragraph 1 above.
4. Simultaneously with the execution of this Note, the Company will pay twenty percent (20%) of the total outstanding indebtedness, excluding note interest and the delinquent amounts described above in paragraph 2, or \$3,715.27 to the Health and Welfare Fund and \$2,637.46 to the Pension Fund.
5. For six (6) consecutive months commencing on March 1, 2008 and ending on August 1, 2008, the Company will pay \$2,601.18 per month to the Health and Welfare Fund and \$1,869.89 per month to the Pension Fund.
6. The Company will remit all payments to the Funds' Administrative Offices, which are located at 11465 Cermak Road, Westchester, Illinois 60154.
7. The Company understands and agrees that this Installment Note is based on reports submitted by the Company to the Funds and that the Funds reserve the right to conduct an audit, in accordance with the terms of the collective bargaining agreement and the Funds' respective Agreements and Declarations of Trust, to determine benefit contribution compliance for the time period covered herein and further reserve the right to collect any unpaid contributions, union dues, interest, liquidated damages, and audit costs as shown on said audit.

the CBA and the Fund's respective Agreements and Declarations of Trust. If the contributions are not paid by the 10<sup>th</sup> day following the date on which payment should have been received, the contributions shall be considered delinquent and all charges which apply to the late payment of contributions under the terms of the CBA and the Fund's respective Agreements and Declarations of Trust shall apply, including, but not limited to, the assessment of interest and liquidated damages. Further, in the event the Company fails to timely make any payments described in this Note, all amounts described in paragraph 1 herein shall immediately become due on the 10<sup>th</sup> day following the date on which payment should have been received by the Fund's under the terms of this Note. In such event the Company further agrees to pay all attorney fees and costs incurred by the Funds in any action to enforce any part or all of this note.

9. This Installment Note is conditioned on the Company's staying current on its obligations to the Funds under the terms of the collective bargaining agreement and the Funds' respective Agreements and Declarations of Trust. In the event that the Company fails to maintain its obligations under the terms of the collective bargaining agreement and the Funds' respective Agreements and Declarations of Trust, including, but not limited to, its obligations to submit timely contribution reports and to make timely contribution payments by the tenth day following the month in which laborers' work was performed, then the Funds shall have the right to accelerate and collect all amounts due under this Installment Note, plus payment of all attorneys' fees and costs incurred by the Funds in any action to accelerate this Installment Note.
10. The Company further agrees to obtain and maintain a surety bond to insure the payment of wages and benefit contributions as required under the terms of the CBA.
11. The Company shall have the right to prepay the entire amount due under the Note prior to the date upon which payment is due without penalty and without payment of any precalculated Note interest that has not accrued as of the date full payment has been made.

The Parties hereby agree to these terms by their execution hereof on the 10<sup>th</sup> day of the March, 2008.

Benson Construction

By: [Signature]

Title: President

Laborers' Pension Fund

By: \_\_\_\_\_

Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity.

By: \_\_\_\_\_

**Levinson Simon & Sprung, P.C.**  
Certified Public Accountants

November 29, 2007

566 W. Lake St.  
Suite 3 West  
Chicago, IL 60661-1414  
(312) 655-0037  
Fax (312) 655-9145Trustees Laborers' Pension Fund and  
Health and Welfare Department of the  
Construction and General Laborers'  
District Council of Chicago and Vicinity  
Jean Mashos, Director  
11465 Cermak Road  
Westchester, Illinois 60154Re: Benson Construction Co.  
Case # CHLAB-1007-1519  
Acct # 10387

Gentlemen:

In accordance with your instructions we have performed certain agreed upon procedures to the payroll records presented for our inspection by the above mentioned employer. The purpose of the inspection was to determine the accuracy of the employer's monthly contributions to the Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity for the period May 1, 2005 through October 31, 2007. This agreed upon procedure engagement was performed in accordance with the standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity.

Attached hereto are yearly schedules showing the detail of the under-reported hours and computation of the amounts due to the Funds. The findings consist of unreported and under-reported wages and hours of individuals on payroll doing covered work that have been previously reported to the Funds. The contractor is delinquent for October 2007. *Separate schedules and summaries have been prepared according to the funds due.*

Our examinations indicated that the employer owes the following amounts for the period audited, exclusive of interest.

	<u>Amount Due</u>
Welfare	\$ 7,818.76
Pension	5,532.14
Training	214.99
IAF	69.30
LDCLMCC	118.80
LECET	59.40
Dues	<u>898.58</u>
Total	<u>\$ 14,711.97</u>

Members American Institute of Certified Public Accountants



Trustees Laborers' Pension Fund and  
Health and Welfare Department of the  
Construction and General Laborers'  
District Council of Chicago and Vicinity  
November 29, 2007  
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We were not engaged to, and did not, perform an examination, the objective of which would be the expression of an opinion on the accompanying report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We shall be pleased to furnish any additional information desired and have attached our bill for services.

Very truly yours,



LEVINSON SIMON & SPRUNG P.C.  
Howard B. Levinson, CPA, MBA

HBL/lab

Enclosures

cc: Denise Ayala

**PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.**

Case #: CHLab-1007-1519  
Audit Period: 5/1/2005 thru 10/31/2007  
Fiscal Year End: May

**Levinson Simon & Sprung, P.C.**  
Reconciliation of Differences Per Year

**ALL FUNDS**

Fiscal Year Ending		MAY 2008	MAY 2007	MAY 2006	MAY 2005	Total
Dollars Not Reported		31,832.80	392.49	912.04	20.00	33,157.33
Hours Not Reported		944.00	2.00	39.00	2.00	987.00
Dollar Amount Due						
Welfare Fund		7,523.68	14.92	267.54	12.62	7,818.76
Pension Fund		5,361.92	9.68	153.66	6.88	5,532.14
Training Fund		207.68	0.34	6.63	0.34	214.99
IAF		66.08	0.14	2.73	0.14	69.09
LDCLMCC		113.28	0.24	4.68	0.24	118.44
LECET		56.64	0.12	2.34	0.12	59.22
Dues		875.40	6.87	15.96	0.35	898.58
Total		14,204.68	32.31	453.54	20.69	14,711.22
Audit Fee						965.00

Total Amount Due **15,676.22**

Manager: Betar, Leia  
Auditor: Uccen, Suzanne

**PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.**

Case #: CHLab-1007-1519  
Contract: CCA & \*CCA  
Year Ended: May, 2005

Year Ended: May, 2005

**Report Date: 11/29/2007**

**Page 2**  
**Employees**

Contributions computed by Amount per Hour

[illegible]

### Rate Table

[illegible]



**PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.**

Case #: ChLab-1007-1519      Year Ended: May, 2005  
Contract: CCA & \*CCA

**Levinson Simon & Sprung, P.C.**

## Detail Report

**Report Date: 11/28/2007**

**Page 3**  
**Employees**

**Contributions computed as Percentage of Dollars Paid**

[illegible]

PENSION AND WELFARE FUNDS OF CHICAGO LABORENS  
 BENSON CONSTRUCTION CO.  
 Case #: CHLab-1007-1518 Year Ended: May, 2006  
 Contract: CCA & VCA

Levinson Simon & Sprung, P.C.  
 Detail Report  
 Report Date: 11/29/2007

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 Employees

Contributions computed by Amount per Hour

SSN	Name	JUN 2005	JUL 2005	AUG 2005	SEP 2005	OCT 2005	NOV 2005	DEC 2005	JAN 2006	FEB 2006	MAR 2006	APR 2006	MAY 2006	Total
604-12-8147	CONTRERAS, EDU													29.50
546-83-5340	MIRAMONTES, OS			1.50				29.50						29.50
325-82-9640	TORRES, FILIMON											8.00		1.50
	Total Hours			1.50				29.50				8.00		30.00

### Rate Table

Welfare Fund	\$6.8600			10.28				202.37						267.54
Pension Fund	\$3.9400			5.91				116.23				54.88		153.68
Training Fund	\$0.1700			.26				6.02				31.52		6.83
IAF	\$0.0700			.11				2.07				1.36		2.73
UDOLMOC	\$0.1200			.18				3.54				.56		4.68
LECET	\$0.0800			.09				1.77				.86		2.34
Total				18.83				330.89				89.76		437.58

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
 BENSON CONSTRUCTION CO.  
 Case #: CHLab-1007-1519 Year Ended: May, 2006  
 Contract: CCA & VCCA

Levinson Simon & Sprung, P.C.  
 Detail Report  
 Report Date: 11/29/2007

Page 5  
 Employees

Contributions computed as Percentage of Dollars Paid

SSN	Name	JUN 2005	JUL 2005	AUG 2005	SEP 2005	OCT 2005	NOV 2005	DEC 2005	JAN 2006	FEB 2006	MAR 2006	APR 2006	MAY 2006	Total
604-12-6147	CONTRERAS, EDU							912.04						912.04
	Total Dollars Paid							912.04						912.04
Dues	1.7500%							15.96						15.96
Total								15.96						15.96

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.

Case #: CHLAB-1007-1519 Year Ended: May, 2007  
Contract: CCA & VCCA

Levinson Simon & Sprung, P.C.

Detail Report

Report Date: 11/29/2007

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Employees

Contributions computed by Amount per Hour

SSN	Name	JUN 2006	JUL 2006	AUG 2006	SEP 2006	OCT 2006	NOV 2006	DEC 2006	JAN 2007	FEB 2007	MAR 2007	APR 2007	MAY 2007	Total
335-00-7851	LARA, PASCUAL						2.00							2.00
	Total Hours						2.00							2.00

Rate Table

Welfare Fund	\$7.4600						14.92							14.92
Pension Fund	\$4.8400						9.68							9.68
Training Fund	\$0.1700						.34							.34
IAF	\$0.0700						.14							.14
LDGLMCC	\$0.1200						.24							.24
LECET	\$0.0600						.12							.12
Total							25.44							25.44

PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.

Case #: CHLAB-1007-1519 Year Ended: May, 2007  
Contract: CCA & CCA

Levinson Simon & Sprung, P.C.

Detail Report

Report Date: 11/29/2007

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Employees

Contributions computed as Percentage of Dollars Paid

SSN	Name	JUN 2006	JUL 2006	AUG 2006	SEP 2006	OCT 2006	NOV 2006	DEC 2006	JAN 2007	FEB 2007	MAR 2007	APR 2007	MAY 2007	Total
804-12-8147	CONTRERAS, EDU						6.00							6.00
324-04-4014	KOPPER, THOMAS						386.49							386.49
	Total Dollars Paid						392.49							392.49
Dues	1.7500%						6.87							6.87
Total							6.87							6.87

**PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.**

Case #: CHLab-1007-1519      Year Ended: May, 2008  
Contract: CCA & \*CCA

**Levinson Simon & Sprung, P.C.**  
**Detail Report**  
**Report Date: 11/29/2007**

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**Employees**

Contributors computed by Amount per Hour

[illegible]

### Rate Table

Welfare Fund	\$7,6700				7,523.68					7,523.68
Pension Fund	\$5,6900				5,381.92					5,381.92
Training Fund	\$0.2200				207.68					207.68
IAF	\$0.0700				66.08					66.08
IDCLMCC	\$0.1200				113.28					113.28
LECET	\$0.0800				56.64					56.64
Total					13,329.26					13,329.26

**PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.**

Case #: CHLab-1007-1519      Year Ended: May, 2008  
Contract: CCA & \*CCA

**Levinson Simon & Sprung, P.C.**  
**Detail Report**  
**Report Date: 11/29/2007**

**Page 9**  
**Employees**

**Contributions computed as Percentage of Dollars Paid**

[illegible]

Levinson Simon & Sprung, P.C.  
Reconciliation of Differences Per Year

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PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.

Case #: ChLab-1007-1519

Audit Period: 5/1/2005 thru 10/31/2007

Fiscal Year End: May

## LDCLMCC, LECET AND CCA ONLY

Fiscal Year Ending		MAY 2005	Total
Hours Not Reported		3.00	3.00
Dollar Amount Due			
IAF		0.21	0.21
LDCLMCC		0.36	0.36
LECET		0.18	0.18
Total		0.75	0.75

Manager: Betar, Leia  
Auditor: Uozon, Suzanne

Total Amount Due **0.75**



PENSION AND WELFARE FUNDS OF CHICAGO LABORERS  
BENSON CONSTRUCTION CO.

Case #: CHLAB-1007-1519 Year Ended: May, 2005  
Contract: CCA & CCA

Levinson Simon & Sprung, P.C.

Detail Report

Report Date: 11/29/2007

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Contributions computed by Amount per Hour

SSN	Name	JUN 2004	JUL 2004	AUG 2004	SEP 2004	OCT 2004	NOV 2004	DEC 2004	JAN 2005	FEB 2005	MAR 2005	APR 2005	MAY 2005	Total
048-83-5340	MIRAMONTES, OS												3.00	3.00
	Total Hours												3.00	3.00

State Table

PAF	EDOLMCC	RECET	Total
\$0.0700	\$0.1200	\$0.0800	
			.21
			.36
			.18
			.76

**Levinson Simon & Sprung P.C.**  
**Payroll Audit Information Sheet**

Page 1

EMPLOYER'S NAME	Benson Construction Co.	EMPLOYER #	10387
ADDRESS	3128 N Schoenbeck Rd.	PHONE #	847-541-9880
CITY STATE ZIP	Arlington Heights, IL 60004	FAX #	847-541-9889
EMAIL ADDRESS	dabergand4@aol.com	FEIN	36-2600877
DATE OF CONTRACT		AUDIT PERIOD	5/1/05-10/31/07
CONTACT'S NAME	Mark Berglund	TITLE	President
PERSON FUND IS TO CONTACT	Diana Kopper	TITLE	Secretary
ENTITY TYPE	Corporation	# OF EMPLOYEES	7 current
		AVE # PER MONTH	37 during audit period
			8

BUSINESS ACTIVITY Concrete

Mark Berglund	President	3128 N Schoenbeck Rd, Arlington Heights, IL 60004
Geilak Berglund	Corporate Secretary	Same as above

BANKING FACILITIES USED AND ACCOUNT NUMBER Village Bank & Trust 0010000784

IS EMPLOYER STILL IN BUSINESS?

☒ YES ☐ NO

DOES EMPLOYER HAVE INTEREST IN ANY OTHER COMPANY?

☐ YES ☒ NO

IF YES, LIST NAMES OF SAME


IS EMPLOYER A MEMBER OF ANY TRADE ORGANIZATION/ASSOCIATION? ☒ YES ☐ NO

IF YES, LIST NAMES OF SAME

CCA

INFORMATION PROVIDED BY:

Diana Kopper
--------------

TITLE:

Secretary
-----------

**Levinson Simon & Sprung P.C.  
Payroll Audit Information Sheet**

Page 2

AUDIT DATE

AUDIT SITE (IF DIFFERENT FROM EMPLOYER'S ADDRESS

ALL REQUIRED ACCOUNTING RECORDS WERE AVAILABLE WITH THE EXCEPTION OF

BRIEFLY DESCRIBE THE NATURE OF THE DELINQUENCY, IF ANY

DID YOUR EXAMINATION UNCOVER ANYTHING SPECIAL OR UNUSUAL WHICH SHOULD BE BROUGHT TO THE  
ATTENTION OF THE FUND COUNSEL OR OTHER INTERESTED PERSONS?

☐ YES ☒ NO

IF YES, EXPLAIN

AUDITOR

# EMPLOYER'S BOND

KNOW ALL PEOPLE BY THESE PRESENTS, that we BENSON CONSTRUCTION

COMPANY

CORPORATION

(name of employer)

(indicate corporation, partnership, or sole proprietor)

of ARLINGTON HEIGHTS

(city)

Illinois, herein called the "Principal", and

WEST BEND MUTUAL INSURANCE COMPANY

(name of bonding company)

herein called the "Surety", are hereby held and

firmly bound unto the various fringe benefit and industry funds identified in the collective bargaining agreement between the Construction and General Laborers District Council of Chicago and Vicinity, affiliated with the Laborers' International Union of North America (the "Union") and the Principal and any successor collective bargaining agreements, all of which funds are collectively referred to as the "Funds"; unto the Union; and unto all individuals employed by the Principal and represented for collective bargaining purposes by the Union, referred to as the "Union Employees" (the Funds, the Union, and the Union Employees are collectively referred to as the "Obligees") in the penal sum of

TEN THOUSAND

(amount written out)

Dollars (\$ 10,000.00)

(amount)

), for the

obligations and undertakings hereinafter set forth, the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our successors, assigns, heirs, executors, and administrators.

Signed and sealed and dated on this 20th day of March, 2007

Whereas, the above named Principal is employing or proposes to employ employees in a bargaining unit represented by the Union for the purpose of performing certain work as defined in a collective bargaining agreement between the Principal and the Union;

**NOW, THEREFORE,** the conditions of this bond are such that if the Principal shall well and faithfully pay the wages due the Union Employees with respect to the work performed by the Union Employees, the contributions due to the Funds, the dues due to the Union, any interest, liquidated damages, attorneys' fees and/or costs that may become due, and such other amounts as the Principal may be required to pay to the Obligees, or to any of them, pursuant to the collective bargaining agreement between the Principal and the Union or pursuant to the rules and regulations of any or all Funds, then this obligation shall be void; otherwise it shall remain in full force and effect. This obligation of the Principal and Surety shall be joint and several.

If Surety is required to make payments to the Obligees pursuant to the bond, Surety shall have no claim or right of any sort against Obligees.

In the event that the aggregate amount due the Obligees shall exceed the amount of this bond, then the claims of the various Obligees shall be satisfied on a pro rata basis, proportionate to the amount of each Obligor's claim. Any disputes as to the proper distribution in such circumstances, and any disputes regarding the Principal's obligations to the Obligees, shall be resolved in accord with the dispute resolution mechanisms of the collective bargaining agreement between the Principal and the Union.

The Surety shall pay any claim made by the Obligees under this bond within 30 days from receipt of the claim. Should the Surety fail to issue payment within 30 days from receipt of a claim, the Surety shall be liable for the claimed amount and any reasonable attorneys' fees and costs incurred by Obligees in enforcing this bond.

This Bond may be canceled by the Surety 120 days after receipt by the Obligees of the Surety's written notice of cancellation by registered or certified mail.

**PRINCIPAL**

BENSON CONSTRUCTION COMPANY

**SURETY**

WEST BEND MUTUAL INSURANCE COMPANY

By:   
Agent

By: LUKE F. PRAXMARER  
Attorney-In-Fact

A Power of Attorney and Notarial Acknowledgement must be submitted with this bond.

**GUARANTY OF PAYMENT AND INDEMNIFICATION**

This Guaranty ("Guaranty") is made as of March 10, 2008 by the undersigned, Michael Byrd, (the "Guarantor"), to and for the benefit of the **LABORERS' PENSION FUND AND THE LABORERS' WELFARE FUND OF THE HEALTH AND WELFARE DEPARTMENT OF THE CONSTRUCTION AND GENERAL LABORERS' DISTRICT COUNCIL OF CHICAGO AND VICINITY** (collectively, the "Funds").

WHEREAS, Benson Construction (the "Company") has agreed to pay a total of \$34,954.51 to the Funds in settlement of the alleged delinquent contributions owed to the Funds and to be paid under the terms of a Settlement Agreement and Installment Note ("Note").

WHEREAS, the Funds are unwilling to enter into the Note unless the guarantor executes this Guaranty; and

WHEREAS, the Guarantor has a financial interest in the Company and will be benefited by the Note;

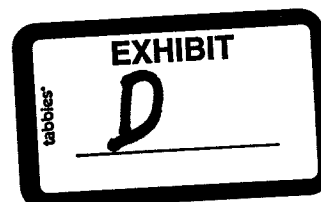
NOW WHEREAS, in consideration of the foregoing, the Guarantor agrees as follows:

1. Guaranty of Payment and Indemnification. The undersigned guarantees, absolutely and unconditionally: (a) the payment when due of the entire principal indebtedness and all interest evidenced by the Note during the six (6) month payment period including interest and liquidated damages for late or unpaid payments due on the note; and (b) the full and complete payment of any and all fees and costs incurred pursuant to default under terms of the Note, whether litigation is involved or not, and if involved, whether at the trial or appellate levels or in pre- or post-judgment bankruptcy proceedings in enforcing or realizing upon the obligations of the Guarantor hereunder (the obligations of Guarantor under this Paragraph 1 are collectively hereinafter referred to as the "Obligations"). The Guarantor also agrees to be personally liable for all monthly benefit contributions, union dues and/or wages owed from the Company to the Funds, the District Council, all ancillary funds, and/or the participants that are due at the time the Note and Guaranty are entered into and/or are incurred and become due and owing for the duration of the Note, including all interest, liquidated damages, audit costs, attorneys' fees and costs.

2. Continuing Guaranty. This Guaranty shall be a continuing Guaranty, and shall not be discharged, impaired or affected by; (a) the existence or continuance of any obligation on the party of the Company with respect to the Note; (b) any forbearance or extension of the time of payment of the Note; (c) the validity or invalidity of the Note; (d) any defenses whatsoever that the Company or any of the party thereto may have to the performance or observance of any term, covenant or condition contained in the Note; (e) the existence or non-existence of the Company as a legal entity; (f) any limitation or exculpation of (other than the payment and performance in full of all of the Company's Obligations) that Guarantor may have as to his undertakings, liabilities and obligations hereunder, including any defenses based upon any legal disability of the Company or any discharge or limitation of the disability of the Company, whether consensual or arising by operation of law or any bankruptcy, insolvency or debtor-relief proceeding, or from any other cause, each and every such defense being hereby waived by the Guarantor.

3. Waivers. Guarantor waives diligence, presentment, protest, notice of dishonor, demand for payment, extension of time of payment, notice of acceptance of this Guaranty, non-payment at maturity and indulgences and notices of every kind not provided for under this Guaranty. It is the intention of this Guaranty that Guarantor shall remain liable as principal, notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of Guarantor, until all of the Company's obligations shall have been fully paid and performed.

4. Subrogation. Notwithstanding anything to the contrary elsewhere contained herein or in the Note, the guarantor expressly waive with respect to the Company any and all rights at law or in equity to subrogation, to reimbursement, to exoneration, to contribution, to set off or to any other rights that could accrue to a surety against a principal, to the Guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker, and which the guarantor may have or hereafter acquire against the Company in connection with or as a result of Guarantor's execution, delivery and/or performance of this Guaranty or the Note.





The Guarantor agrees that he or she shall not have or assert any such rights against the Company or its successors and assigns or any other period (including and surety), either directly or as an attempted set off to any action commenced against the Guarantor by the Company (as borrower or in any other capacity) or any other person.

5. Independent Obligations. The Funds may enforce this Guaranty without first resorting to or without first having recourse to the Note; provided, however, that nothing herein contained shall preclude the Funds from suing on the Note or from exercising any other rights; and the Funds shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of any payment hereunder or enforcement hereof.

6. Acceleration. In the event that payments due under the Note shall be accelerated, the Guarantor's obligations hereunder shall also be accelerated without further notice from the Funds.

7. Effect of Bankruptcy. This Guaranty shall continue in full force and effect notwithstanding the institution by or against the Company of bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or the disaffirmance of the Note in any such proceedings, or others.

8. Termination. This Guaranty shall remain in full force and effect as to the Guarantor until all of the Company's Obligations under the Note outstanding shall be finally and irrevocably paid in full. Payment of all of the Company's Obligations from time to time shall not operate as a discontinuance of this Guaranty. If after receipt of any payment of all or any part of the Company's Obligations, the Funds are for any reason compelled to surrender such payment to any person or entity, because such payment is determined to be void or voidable as a preference, impermissible set off, or a diversion of trust fund, or for any reason, this Guaranty shall continue in full force notwithstanding any contract action which may have been taken by the Funds in reliance upon such payment, and any such contrary action so taken shall be without prejudice to the Funds' rights under this Guaranty and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

9. The Company's Financial Condition. The guarantor assumes full responsibility for keeping fully informed of the Company's financial condition and all other circumstances affecting the Company's ability to perform its Obligations, and agree that the Funds will have no duty to report to Guarantor any information which the Funds receive about the Company's financial condition or any circumstances bearing on its ability to perform.

10. Expenses. The undersigned agrees to pay and reimburse the Funds for all cost and attorney's fees, which they may expend or incur in the enforcement of this Guaranty or any of the Company's Obligations under the Note.

11. Delay, Cumulative Remedies. No delay or failure by the Funds to exercise any right to remedy against the Company or Guarantor will be construed as a waiver of that right or remedy. All remedies of the Funds against the Company and the Guarantor are cumulative.

12. Binding Effect. This guaranty shall inure to the benefit of and may be enforced by the Funds, and shall be binding upon and enforceable against the Guarantor and Guarantor's heirs, legal representatives, successors and assigns. In the event of the death of the Guarantor, the obligations of such deceased Guarantor shall continue in full force and effect against his estate, personal representatives, successors and assigns. Without limiting the generality of the foregoing, the Funds (or their successors and assigns) may from time to time and without notice to undersigned, assign any and all of their rights under this Guaranty without in any way affecting or diminishing the obligations of the undersigned hereunder, who shall continue to remain bound by the obligated to perform under and with respect to this Guaranty as though there had been no such assignment.

13. Default. The Guarantor hereby authorizes irrevocably any attorney of any court of record to appear for him/her in such court, at any time after ten (10) days notice after default in any payment due under this Guaranty, and confess judgement against Guarantor, after service of notice of the claimed default, in favor of the Funds for such amount to be unpaid and owed thereon, including interest, liquidated damages and reasonable cost of collection including reasonable attorneys' fees. The Guarantor agrees to waive and release all errors which may intervene in any

such proceedings, and consent to immediate execution upon such judgement, hereby ratify and confirming all that said attorney may do by virtue hereof.

14. Warranties. Guarantor makes to the Funds the following representations and warranties:

(a) Authorization. Guarantor has full right, power and authorization to enter into this Guaranty and carry out his obligations hereunder

(b) No Conflict. The execution, delivery and performance by Guarantor of this Guaranty will not violate or be in conflict with, results in a breach of, or constitute a default under, any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or any of his assets or properties is bound, or any order, writ, injunction or decree of any court or governmental institute.

(c) Litigation. There are no actions, suits or proceedings pending, or to the knowledge of Guarantor, threatened against or adversely affecting any Guarantor at law or in equity or before or by governmental agency or instrumentality which involve any of the transactions herein contemplated, or the possibility of any judgement or liability which may result in any material and adverse change in the financial condition of any Guarantor. Guarantor is not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court.

(d) Enforceability. This guaranty is a legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally.

15. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (I) delivered in person, (II) three (3) days after deposit in a regularly maintained receptacle of the United States mail as registered or Certified mail, postage prepaid, (III) when received if sent by private courier service, or (IV) on the day on which Guarantor refuses delivery by mail or by private courier service, and (b) addressed as follows:

In Case of Guarantor

Mark W. Berglund  
3128 N. Schenbeck  
Arlington Hts IL  
60004

In Case of the Funds:

Collection Counsel  
Pat Wallace  
Laborers Pension & Welfare Fund  
Sub Office  
53 W Jackson Blvd  
Suite 660  
Chicago IL 60604-3607

or such other addresses as may from time to time be designated by the party to be addressed by notice to the other in the manner hereinabove provided. The Funds will use their best efforts to send courtesy copies of notices provided hereunder to Guarantor's attorney, \_\_\_\_\_. But the failure by the Funds to send courtesy copies to Guarantor's attorney shall not limit or restrict the Funds' rights under this Guaranty in any manner nor relieve Guarantor of any obligations under this guaranty.

16. Additional Waivers. Guarantor expressly and unconditionally waives, in connection with any suit, action or proceeding brought by the Funds on this Guaranty, any and every right he or she may have to (I) injunctive relief, (II) a trial by jury, (III) interpose any counterclaim therein and (IV) seek to have the same consolidated with any other or separate suit, action or proceeding.



17. Severability. If all or any portion of any provision of this Guaranty is declared or found by a court of competent jurisdiction to be unenforceable or null and void, such provision or portion thereof shall be deemed stricken and severed from this Guaranty and the remaining provisions and portions hereof shall continue in full force and effect.

18. Applicable Law; Venue. This Guaranty and the transactions evidenced hereby shall be construed and interpreted under the laws of the State of Illinois. Guarantor, in order to induce the Funds to accept this Guaranty and enter into the loan agreement, and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, agrees that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of, related to or from this Guaranty shall be litigated, at the Fund's sole discretion and election, only in courts having a situs within the county of Cook, State of Illinois, Eastern Division. Guarantor hereby waives any right he or she may have to transfer or change the venue or any litigation brought against him by the Funds on this agreement in accordance with this paragraph.

19. Time is of the Essence. Time is of the essence of this Guaranty as to the performance of the undersigned.

20. Death of a Guarantor. In the event of the death of Guarantor, the Funds shall have the right to accelerate the indebtedness evidenced by the Note unless, within sixty (60) days of his death, Guarantor's estate assumes his obligations hereunder by an instrument satisfactory to the Funds and delivers to the Funds security for performance of such obligations satisfactory to the Funds.

IN WITNESS WHEREOF, the three undersigned Guarantors has executed this instrument as of the date and year first above written.



354-54-8548  
Social Security Number

Date: 3-10-2008

APPROVED AS TO FORM AND SUBSTANCE  
ON BEHALF OF GUARANTOR;

Dated: \_\_\_\_\_